

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Santosh Prakash	Team: Squad #8	CCRB Case #: 201806414	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 07/30/2018 1:15 AM	Location of Incident: In front of § 87(2)(b)	Precinct: 52	18 Mo. SOL 1/30/2020	EO SOL 1/30/2020	
Date/Time CV Reported Tue, 08/07/2018 12:26 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 08/07/2018 12:26 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Edgar Rivera	05576	955381	052 PCT
2. SGT Amadeo Oktrova	01914	949413	052 PCT
3. An officer			
4. Officers			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Karolina Scott	00483	961552	052 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Edgar Rivera	Discourtesy: Police Officer Edgar Rivera spoke discourteously to § 87(2)(b)	§ 87(2)(b)
B.POM Edgar Rivera	Abuse: Police Officer Edgar Rivera threatened to arrest § 87(2)(b)	§ 87(2)(b)
C.SGT Amadeo Oktrova	Abuse: Sergeant Amadeo Oktrova threatened to use force against § 87(2)(b)	§ 87(2)(b)
D.SGT Amadeo Oktrova	Discourtesy: Sergeant Amadeo Oktrova spoke discourteously to § 87(2)(b)	§ 87(2)(b)
E.POM Edgar Rivera	Abuse: Police Officer Edgar Rivera searched the vehicle in which § 87(2)(b) was an occupant.	§ 87(2)(b)
F.POM Edgar Rivera	Abuse: Police Officer Edgar Rivera interfered with § 87(2)(b)'s use of a recording device.	§ 87(2)(b)
G.POM Edgar Rivera	Abuse: Police officer Edgar Rivera damaged § 87(2)(b)'s cell phone.	§ 87(2)(b)
H.POM Edgar Rivera	Force: Police Officer Edgar Rivera used physical force against § 87(2)(b)	§ 87(2)(b)
I. Officers	Force: Officers used physical force against § 87(2)(b)	§ 87(2)(b)
J.POM Edgar Rivera	Discourtesy: Police Officer Edgar Rivera spoke discourteously to § 87(2)(b)	§ 87(2)(b)
K. Officers	Abuse: Officers searched the vehicle in which § 87(2)(b) was an occupant.	§ 87(2)(b)
L. An officer	Abuse: An officer damaged § 87(2)(b)'s vehicle.	§ 87(2)(b)

Case Summary

§ 87(2)(b) filed the following complaint with the CCRB's intake unit on August 7, 2018.

On July 30, 2018, at approximately 1:15 am, § 87(2)(b) was pulled over outside 2332 University Avenue in the Bronx by PO Edgar Rivera and PO Karolina Scott of the 52nd Precinct. Upon engaging him, PO Rivera used profanity while speaking with § 87(2)(b) (**Allegation A: Discourtesy**, § 87(2)(g)). PO Rivera requested his patrol supervisor to the scene, identified by the investigation as Sgt. Amadeo Oktrova (52nd Precinct), relaying by radio that he was dealing with a driver who was "being a dick." (**subsumed, Allegation A: Discourtesy**, § 87(2)(g)). PO Rivera then advised § 87(2)(b) that he could be arrested when his supervisor responded. (**Allegation B: Abuse of Authority**, § 87(2)(g)). When Sgt. Oktrova arrived, he threatened to tase § 87(2)(b) allegedly with a taser pointed at him, if he did not "get the fuck out" of the vehicle. (**Allegation C: Threat of Force**, § 87(2)(g); **Allegation D: Discourtesy**, § 87(2)(g)). PO Rivera then reached into the vehicle, grabbed § 87(2)(b)'s cell phone – with which he was video recording – and threw it to the ground, causing damage to the device. (**Allegation E: Vehicle Search**, § 87(2)(g); **Allegation F: Recording Interference**, § 87(2)(g); **Allegation G: Property Damage**, § 87(2)(g)). PO Rivera then pulled § 87(2)(b) out of the vehicle and, with the assistance of other officers, threw him to the ground. (**Allegation H: Physical Force**, § 87(2)(g); **Allegation I: Physical Force**, § 87(2)(g)). While handcuffing him, PO Rivera allegedly told § 87(2)(b) "Fuck you, I told you motherfucker, I run this shit." (**Allegation J: Discourtesy**, § 87(2)(g)). PO Rivera then searched the interior of the vehicle (**subsumed, Allegation E**) with the assistance of other officers at the scene. (**Allegation K: Vehicle Search**, § 87(2)(g)). § 87(2)(b) was removed to the stationhouse and charged with § 87(2)(b). (BR16) At some point while his vehicle was in police custody, an officer allegedly caused damage to it. (**Allegation L: Property Damage**, § 87(2)(g)). There is video footage of the incident. (BR02-BR03, BR05)

Findings and Recommendations

Allegation (A) Discourtesy – Word: Police Officer Edgar Rivera spoke discourteously to

§ 87(2)(b)

Allegation (B) Abuse of Authority: Police Officer Edgar Rivera threatened to arrest

§ 87(2)(b)

It is undisputed that on July 30, 2018, at approximately 1:15 am, § 87(2)(b) was pulled over outside § 87(2)(b) by PO Edgar Rivera and PO Karolina Scott, for the tinted windows on his SUV. The video footage establishes that PO Rivera, at the beginning of the traffic stop, spoke discourteously to § 87(2)(b) and threatened him with arrest. (BR03) At issue is whether his remarks were justified.

§ 87(2)(b) stated that he was visiting New York at the time from his home in Maine and believed that his windows were tinted at a gradient under 35%, the maximum level allowed in Maine. Riding in the rear was § 87(2)(b)'s friend and the only other occupant. Upon being stopped by the officers, with PO Rivera at the driver's side window and PO Scott on

the passenger side, § 87(2)(b) tried to explain that he was visiting from another state. But PO Rivera allegedly asked for his driver's license and registration and told him: "I don't give a fuck where you are from. This is New York, I can pull you over if I want to and there's nothing you can do." § 87(2)(b) in turn was offended by the profanity. Deciding that he was not going to produce his documents as requested, he asked PO Rivera to call his supervisor to the scene and told him he was going to be video recording the encounter on his cell phone. PO Rivera said "go ahead" and told § 87(2)(b) that he would go to jail if his supervisor came to the scene, for refusing to provide his documents. PO Rivera then radioed for his supervisor, at which time he remarked that § 87(2)(b) was "being a dick." PO Rivera stayed by his window as they waited for the supervisor, identified by the investigation as Sgt. Amadeo Oktrova, without attempting to engage him any further. While PO Rivera did not question him about drugs or weapons, § 87(2)(b) acknowledged that he was carrying medical marijuana in the vehicle – purchased legally in Maine at a state-sanctioned dispensary – packaged in multiple pharmacy vials which were stored inside the center console. § 87(2)(b) denied smoking marijuana in the vehicle and denied consuming any drugs or alcohol that night. (BR01)

§ 87(2)(b) did not cooperate with the investigation's interview attempts.

PO Rivera stated that he and PO Scott stopped § 87(2)(b) because he was driving with heavily tinted windows and an obstructed license plate. Once at the driver's side door, he asked § 87(2)(b) to provide his license and registration but § 87(2)(b) refused and became verbally combative, even after PO Rivera repeatedly ordered him to comply. When § 87(2)(b) then asked to speak with a supervisor, PO Rivera requested Sgt. Oktrova to the scene. While PO Rivera detected the odor of marijuana emanating from the interior of the vehicle early on during the stop, he had no opportunity to question § 87(2)(b) about it as he was too uncooperative. PO Rivera did not recall threatening to arrest § 87(2)(b). PO Rivera denied telling him he could pull him over at will, and denied using any profanity against him at any point during the stop. (BR06)

PO Scott's statements regarding this period of the stop were consistent with PO Rivera's. (BR07) Sgt. Oktrova arrived shortly after the interactions occurred. (BR08)

The investigation obtained video footage from an exterior surveillance camera installed on the façade of § 87(2)(b). (BR05) While the camera captured the vehicle stop in its entirety, individuals and actions were largely indistinguishable due to the poor resolution, the low-light setting, and the glare of police turret lights. (BR05)

§ 87(2)(b) first provided the investigation with a 10 second video clip, recorded by § 87(2)(b) from the rear seat, showing the moments leading up to § 87(2)(b)'s removal from the vehicle (BR02, discussed further in the following page). A second video recording, 2 minutes and 17 seconds long and also recorded by § 87(2)(b) from the rear, was obtained after the involved officers were interviewed. (BR03)

The video begins with § 87(2)(b) asking PO Rivera, seen just outside the driver's side door, to call his supervisor. PO Rivera states: "That's not a problem but you are going to have to give me your license." Between 00:15 and 00:30, § 87(2)(b) proceeds to argue with PO Rivera about how his tints are legal outside the state. Between 00:30-00:39, PO Rivera appears to be communicating over radio, stating: "Can you come to Fordham and Uni'? Yeah – I got a car stop, this dude is being a dick." Between 00:46 -00:53, PO Rivera states: "When the boss comes, it is going to be worse for you – you can either give me the information now or you are going to be going back to the precinct – I promise you are going to be coming back to the precinct." § 87(2)(b) responds: "I'm not giving you anything right now." At 00:57, § 87(2)(b) states: "I'm going to start recording." PO Rivera responds: "That's fine. But I'm tell you now, since you are refusing to give you license..." § 87(2)(b) says: "I'm not refusing to give you anything...I have my license – I feel like you are trying to pull me over because you are trying to be nosy..." PO Rivera states: "Whenever you are ready to provide that license you let me know..." § 87(2)(b) continues to argue with PO Rivera, and PO Rivera continues to tell him that it does not matter where he is from or how he personally feels. PO Rivera specifically addresses a device obstructing § 87(2)(b)'s incense plate. (1:48) At 1:59, PO Rivera again states: "When you are ready to hand me..." § 87(2)(b) says: "I'm not handing you anything." PO Rivera then states: "You are coming back to the precinct when the boss gets here. I promise you, I promise you are coming back." (1:59-2:15) The video then ends abruptly. (BR03)

Per New York Vehicle and Traffic Law (VTL) § 1102, an arrestable offense: "No person shall fail or refuse to comply with any lawful order or direction of any police officer [...] duly empowered to regulate traffic." (BR09)

While Patrol Guide (P.G.) procedure 203-09 requires officers to be courteous and respectful when interacting with civilians, an officer's use of profanity during certain types of encounters – such as those involving physical confrontations or violence – may sometimes be "excusable" by the exigencies of the moment. (*DCT Case No. 2017-17276*; BR10, BR14)

§ 87(2)(g)

§ 87(2)(g)

Allegation (C) Abuse of Authority: Sergeant Amadeo Oktrova threatened § 87(2)(b) with the use of force.

Allegation (D) Discourtesy - Word: Sergeant Amadeo Oktrova spoke discourteously to § 87(2)(b)

Allegation (F) Abuse of Authority: Police Officer Edgar Rivera interfered with § 87(2)(b)'s use of a recording device.

Allegation (H) Force – Physical Force: Police Officer Edgar Rivera used physical force against § 87(2)(b)

Allegation (I) Force – Physical Force: Officers used physical force against § 87(2)(b)

Allegation (J) Discourtesy - Word: Police Officer Edgar Rivera spoke discourteously to § 87(2)(b)

According to § 87(2)(b), Sgt. Oktrova came to § 87(2)(b)'s window as soon as he arrived. Without pausing to confer with PO Rivera, who was also at the window, Sgt. Oktrova then allegedly pointed a taser at § 87(2)(b)'s face, and yelled "get the fuck out of the car or I'll taser you." Sgt. Oktrova then reached into the vehicle through the window, grabbed § 87(2)(b)'s cell phone – which he had been holding with the intention of recording - and "flung it to the ground" outside. Neither PO Rivera nor Sgt. Oktrova had told him to put the phone away before. Deciding to comply, § 87(2)(b) told Sgt. Oktrova that he was stepping out and began to open the door. As he did so, PO Rivera and Sgt. Oktrova swung the door open, pulled him out, threw him to the ground chest-down, and cuffed him. While § 87(2)(b) believed that other responding officers in addition to PO Rivera and Sgt. Oktrova had been involved in pulling him out and throwing him to the ground, he was unable to describe any of the individuals or their actions on him. PO Rivera then handcuffed § 87(2)(b) as he was on the ground and allegedly said: "Fuck you – I told you motherfucker, I run this shit – this is New York." (BR01)

PO Rivera stated that § 87(2)(b)'s belligerence had left him concerned that he could be a threat to the officers' safety, but observed nothing notable about him besides the odor of marijuana as they waited for Sgt. Oktrova. PO Rivera did not recall if Sgt. Oktrova engaged with § 87(2)(b) upon arriving at the scene and joining him at the driver's side window. At this point, PO Rivera ordered § 87(2)(b) out of the vehicle, but he refused to do so. § 87(2)(b) then suddenly began to raise the driver's side window, as if to close it, without explanation. As the ignition was still on, PO Rivera feared that § 87(2)(b) – whose "extreme non-compliance" had already made him a possible threat – was about to flee the scene. PO Rivera thus decided to restrain § 87(2)(b) as follows: he first used his hand to stop the window from closing shut; he then then opened the driver's-side door, § 87(2)(b) out, lowered him to ground, and handcuffed him. PO Rivera considered § 87(2)(b) under arrest at this time. PO Rivera denied slamming § 87(2)(b) to the ground and did not recall if Sgt. Oktrova or PO Scott assisted him. (BR06)

PO Rivera acknowledged that prior to pulling § 87(2)(b) out, he first grabbed the phone he had been holding in one of his hands. Although § 87(2)(b) may have been video recording at the time, PO Rivera stated that he had to take the phone as it was standard policy to ensure that a suspect's hands were entirely empty when handcuffed. PO Rivera did not recall if he ordered § 87(2)(b) to drop the phone immediately before grabbing it. PO Rivera considered § 87(2)(b) under arrest when he was removed and handcuffed. PO Rivera did not know what he did with the

phone after grabbing it from § 87(2)(b) since he was occupied with handcuffing him. PO Rivera denied taking the phone to prevent § 87(2)(b) from video recording. (BR06)

Sgt. Oktrova believed that he responded to the scene alone after being advised by PO Rivera that he was dealing with an uncooperative driver. When he got there, he found PO Rivera by the driver's side window, instructing § 87(2)(b) to exit the vehicle. § 87(2)(b) was refusing. Sgt. Oktrova did not recall whether he spoke to § 87(2)(b) when he joined PO Rivera, but noted that he immediately smelled the odor of marijuana. Sgt. Oktrova's account of § 87(2)(b)'s actions thereafter was consistent with PO Rivera's. Similarly, he stated that § 87(2)(b)'s behavior had caused him to fear for the officers' safety. While Sgt. Oktrova also said that PO Rivera removed § 87(2)(b) from the vehicle and lowered him to the ground without using further force, he did not recall the cell phone being grabbed.

Sgt. Oktrova also feared for his safety and the safety of PO Rivera as § 87(2)(b) did not show his hands. He did not remember whether § 87(2)(b) was making any other movements in the car. PO Rivera then opened § 87(2)(b)'s driver's side door and pulled § 87(2)(b) out of his car. PO Rivera then guided § 87(2)(b) down to the ground. Sgt. Oktrova did not recall if he assisted PO Rivera in doing so. Sgt. Oktrova denied pointing his taser at § 87(2)(b) or threatening to tase him. Sgt. Oktrova denied directing any profanity at § 87(2)(b) at any point and did not hear the other officers do so either. (BR08)

PO Scott's account of § 87(2)(b)'s removal mirrored Sgt. Oktrova's. She did not recall assisting PO Rivera, said Sgt. Oktrova never pointed his taser or threatened to tase § 87(2)(b) and said no profanity was used by anyone at the scene. (BR07)

As noted previously, the surveillance footage only shows the broad outlines of the stop. At 1:16:24, § 87(2)(b)'s vehicle is pulled over by PO Rivera and PO Scott. At 1:20:14, Sgt. Oktrova arrives on scene. At 1:20:33, there appears to be physical movement outside the driver's-side door, but the nature of the action is unclear. Between 1:23:15 and 1:23:30, an officer appears to enter the vehicle through the driver's side door. At 1:26:15, § 87(2)(b)'s vehicle and the two police vehicles all leave the scene. (BR05)

The 10 second video recorded by § 87(2)(b) begins with an officer off-camera ordering somebody – presumably, § 87(2)(b) – to exit the vehicle, stating: “You have two seconds to get out – or you are getting tased.” At 00:03, what appears to be the same speaking officer states “get the fuck out.” While there is then movement around the driver's seat, the action cannot be made out from the footage. An officer off-camera then yells “stay right there, keep your hands up!” (00:07-00:08) A voice presumably § 87(2)(b)'s says, “stay here or get out – which one?” A female tells him to “get out.” (BR02)

Sgt. Oktrova, PO Rivera, and PO Scott all stated that the voice in question was not their own and none of them knew whose it could be. PO Rivera believed that the video corresponded to the moments leading up to § 87(2)(b)'s removal, when Sgt. Oktrova was by his side. PO Scott stated the same. Sgt. Oktrova did not know what time frame the video represented. (BR06-08)

Although § 87(2)(b) believed that it was Sgt. Oktrova who grabbed his phone and pulled him out of the vehicle, the investigation came to conclude that: 1.) while the subject of the above-

noted discourtesy (“get the fuck out”) and taser threat was Sgt. Oktrova by the preponderance of the evidence; 2.) it was PO Rivera – per his own admissions – who then seized the phone and removed § 87(2)(b) outside.

During a traffic stop, an officer may order any occupants of a vehicle to exit – a “de minimis intrusion” in the interest of the officer’s safety. (Pennsylvania v Mimms, 434 US 106, 111 [1977]; BR11) A “potentially menacing set of circumstances...in the context of a car stop” – if objectively indicative of a threat to officer safety – may justify “seizure and temporary detention as a proper precautionary measure...” (People v Livigni, 88 AD2d 386, 389 [2d Dept 1982]; BR12)

NYPD Patrol Guide (P.G.) Procedure 221-01 requires that use of force must be objectively reasonable under the circumstances. (BR13)

While Patrol Guide (P.G.) procedure 203-09 requires officers to be courteous and respectful when interacting with civilians, an officer’s use of profanity during certain types of encounters – such as those involving physical confrontations or violence – may sometimes be “excusable” by the exigencies of the moment. (DCT Case No. 2017-17276; BR10, BR14)

Under NYPD Legal Bureau guidelines, an observer’s right to record police activity is not absolute and does not extend to the individual who is the subject of police action, whether it involves a detention or arrest. (BR15)

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (E) Abuse of Authority: Police Officer Edgar Rivera searched the vehicle in which § 87(2)(b) was an occupant.

Allegation (K) Abuse of Authority: Officers searched the vehicle in which § 87(2)(b) was an occupant.

It is undisputed that PO Rivera searched the interior of the vehicle after § 87(2)(b) was restrained.

§ 87(2)(b) stated that he observed other responding officers search the vehicle as well but could not describe them. (BR01)

PO Rivera acknowledged searching the vehicle as alleged and said he did so because of the odor of marijuana he had detected. The search yielded several pharmacy vials containing marijuana, some in a bag and some loosely dispersed through the length of the vehicle. A switch-blade was also recovered from one of § 87(2)(b)'s pockets. (BR06)

PO Scott and Sgt. Oktrova denied searching § 87(2)(b)'s vehicle. (BR07-BR08)

The arrest report shows that § 87(2)(b) was ultimately charged with criminal possession of marijuana, criminal possession of a weapon, and various VTL violations including moving and equipment VTL violations including improper display of license plate, improperly tinted windows, and aggravated unlicensed operation of a vehicle. (BR18)

When an officer breaches the plane of a vehicle's doorway, said conduct constitutes a search of the vehicle. (People v Hernandez, 238 AD2d 131, 132 [1st Dept 1997]; BR16) The odor of

marijuana from a vehicle will justify the search of the vehicle and its occupants. (People v. Chestnut, 36 N.Y.2d 971 [1975]; BR17)

§ 87(2)(g)

Allegation (G) Abuse of Authority: Police Officer Edgar Rivera damaged § 87(2)(b)'s cell phone.

Allegation (L) Abuse of Authority: An officer damaged § 87(2)(b)'s vehicle.

§ 87(2)(b) alleged that his cell phone was damaged because PO Rivera threw it to the ground after grabbing it from him. (BR01) When the phone was returned to him after his arraignment the following day, he found that its' screen display was cracked. The phone in question was photographed by the investigation at the time of § 87(2)(b)'s interview. While the phone's screen and frame are clearly damaged, § 87(2)(b) did not provide any images of the phone taken before the incident date, or any other documentation to reflect its prior condition. (BR04)

According to § 87(2)(b) he authorized his vehicle to be released to § 87(2)(b) who was released from custody with a summons several hours after the incident. When § 87(2)(b) retrieved his vehicle from § 87(2)(b) he found the passenger door and front bumper scratched (photographs he took at an unknown date are BR04). While he suspected that officers were responsible for the scratches, he could not state why he believed so, beyond stating that § 87(2)(b) could not have caused the damage. § 87(2)(b) did not witness the officers cause any damage to the vehicle. (BR01)

PO Rivera did not know what he did with the phone after grabbing it from § 87(2)(b) as he was in the process of pulling him out of the vehicle and handcuffing him. As he could not have been holding the phone and handcuffing § 87(2)(b) at the same time, PO Rivera acknowledged that he may have dropped the phone but denied doing so intentionally and denied throwing it to the ground. PO Rivera believed that the phone was ultimately picked up by another officer and vouchered but he did not know for sure and was not aware of any damage caused to it during the incident. (BR06)

PO Rivera, PO Scott, and Sgt. Oktrova all denied doing anything to cause damage to the vehicle. (BR06-BR08)

Neither cell phone nor vehicle were invoiced with the other evidence and property seized during the arrest. (BR19)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b) [REDACTED]
[REDACTED]
 - [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- PO Rivera has been a member of service for five years and has been a subject in five CCRB complaints and 11 allegations, four of which were substantiated.
 - 201702768 involved a substantiated threat of force. The Board recommended Formalized Training, and the NYPD imposed Instructions.
 - § 87(4-b), § 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
 - 201703347 involved a substantiated allegation of refusal to provide name/shield. The Board recommended Command Level Instructions and the NYPD imposed Command Level Instructions.
 - § 87(2)(g) [REDACTED]
[REDACTED]
- Sgt. Oktrova has been a member of service for eight years and has been a subject in four CCRB complaints and 14 allegations, two of which were substantiated.
 - § 87(4-b), § 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
 - § 87(2)(g) [REDACTED]
[REDACTED]

Mediation, Civil and Criminal Histories

- Due to the arrest, this claim was not suitable for mediation.
- The results of a Notice of Claim query, filed with the New York City Office of the Comptroller on February 12, 2019, are still pending. § 87(2)(b)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Squad No.: 08

Investigator: _____

Signature	Print Title & Name	Date
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Squad Leader: _____

Signature	Print Title & Name	Date
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